



# California Fair Political Practices Commission

December 5, 1989

John Torrance  
City Attorney  
City of Simi Valley  
2929 Tapo Canyon Road  
Simi Valley, CA 93063

Re: Your Request for Advice  
Our File No. A-89-648

Dear Mr. Torrance:

This is in response to your letter requesting advice on behalf of Simi Valley Mayor Pro Tem Ann Rock concerning the mayor pro tem's duties under the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTIONS

1. If the mayor pro tem receives payments from the State of Hawaii, including airplane tickets, per diem, a rental car and an honorarium, for participating in a state-sponsored conference on hazardous materials release, must these payments be disclosed on the mayor pro tem's statement of economic interests?

2. Will the payments from the State of Hawaii, if the payments exceed \$1,000, violate the gift and honoraria limit enacted by Proposition 73?

## CONCLUSIONS

1. In general, an honorarium is presumed to be a gift and is disclosed on the honoraria schedule (Schedule G). In addition, if payments for air and ground transportation are provided to the mayor pro tem without the mayor pro tem providing consideration of equal or greater value to the source, the payments will be included in the value of the honorarium and also must be disclosed on Schedule G.

However, per diem for necessary accommodations and meals, and free admission, food, beverages and similar nominal benefits provided directly in connection with the event need not be

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

reported. In addition, where the payments for reimbursement for air and ground transportation are provided to the mayor pro tem in exchange for consideration of equal or greater value, the payments will be treated as income and thus be exempted from disclosure by Section 82030(b)(2).

If the honorarium payment is provided in exchange for consideration of equal or greater value, it is also treated as income. If income, it must be reported on Schedule D. Otherwise, the honorarium payment must be disclosed as an honorarium on Schedule G.

2. Since the topic of the conference will be related to the governmental process, the mayor pro tem may not receive more than \$1,000 honorarium from the State of Hawaii for her participation. This amount does not include payments for actual transportation, including airplane tickets, a rental car, and per diem directly in connection with the mayor pro tem's participation in the conference, or any payments for which equal consideration has been provided.

#### FACTS

The State of Hawaii has invited Simi Valley City Mayor Pro Tem Ann Rock to speak at a conference on hazardous materials releases. They have asked the mayor pro tem to share her observations concerning a chlorine leak and evacuation that took place in Simi Valley, and the governmental response to the emergency. The State of Hawaii has offered to provide round trip airplane tickets to Honolulu, per diem of \$120 per day, a rental car and an honorarium of \$200 for the speaking engagement.

You are concerned about the provision of these payments with respect to the disclosure and disqualification provisions of the Act and the new gift and honoraria limit enacted by Proposition 73.

#### ANALYSIS

##### Disclosure and Disqualification

The Political Reform Act was enacted by the people of the State of California by initiative in 1974. The purpose for the disclosure and disqualification provisions of the Act was to ensure that public officials would perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).)

You have asked whether the mayor pro tem who receives free air transportation, per diem, a rental car and an honorarium from the State of Hawaii for speaking at a conference must disclose these items. As a general rule, elected officials must disclose the receipt of gifts and income from any source. (Foreman Advice Letter, No. I-89-323, copy enclosed.) However, where travel and per diem are provided to an official directly in connection with

an event at which an official makes a speech, Regulation 18728 (copy enclosed)<sup>2/</sup> provides:

Free admission, food, beverages and similar nominal benefits provided to a filer at an event at which he or she makes a speech or participates in a panel or seminar, and reimbursement or advance for actual intrastate travel and for necessary accommodations provided directly in connection with the event are not gifts or income and need not be reported by the filer.

Consequently, where a reimbursement is provided to an official for transportation within California in connection with a speech, it is not reportable. (Regulation 18728(a).) Further, free admission, food, beverages and similar nominal benefits provided at the speaking event need not be reported, whether or not the event is in California. (Regulation 18728(a).) Finally, necessary accommodations, including lodging and meals, if provided directly in connection with the event need not be reported whether or not the event is held in California. (Regulation 18728(a).)<sup>3/</sup>

Applied to Mayor Pro Tem Rock's situation, reimbursement for transportation to and from Hawaii would not be exempted. However, per diem for necessary accommodations provided directly in connection with the event and free admission, food, beverages and similar nominal benefits provided at the speaking event need not be reported. All other payments must be reported either as income or gifts.

"Gift" is defined in Section 82028 as any payment to the extent that consideration of equal or greater value is not received. "Income" is defined in Section 82030 as any payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, loan, forgiveness or payment of indebtedness received by the filer and reimbursement for expenses or per diem. However, the definition of "income" in Section 82030(b)(2) expressly excludes:

Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency...

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<sup>2/</sup> Regulation 18728 was amended by the Commission at the Commission's June 5, 1989 meeting. The regulation is in the final rule-making process with the Commission and will be submitted to the Office of Administrative Law in the near future. All references to the regulation in this letter are to the amended version.

<sup>3/</sup> It should be noted that Regulation 18728, which contains these exceptions to the reporting requirements, contemplates that the official will provide a certain level of service at a structured event. (Foreman Advice letter, supra.)

Thus, both income and gifts must be disclosed, and both income and gifts of \$250 or more are potentially disqualifying financial interests. (Section 87103(c) and (e).) Under the facts presented in your letter, the characterization of the payments is of importance. If the payments to the mayor pro tem are characterized as income, the payments will fall within one of the specified exceptions to the definition of "income" and consequently will not be reportable. (Section 82030(b)(2).) If the payments are gifts, the exceptions to income do not apply and the payments are disclosable. (Riddle Advice Letter, No. A-89-200, copy enclosed.)

The primary distinction between a gift and income is whether the recipient has provided equal consideration in exchange for the payment. Where a payment is received and the recipient does not provide consideration of equal or greater value to the source of the payment, the payment will be considered a gift. Conversely, where the recipient can demonstrate that he or she in fact provided equal consideration for the payment, the payment will be treated as income.

An "honorarium" is defined as any payment received for making a speech, participating in a panel or seminar, or writing an article or other published work. (Regulation 18728(a).) An honorarium is presumed to be a gift. (Regulation 18540(c), copy enclosed.)<sup>4/</sup> If an elected officer claims that the payment or payments are income and not a gift, the elected officer has the burden of proving that the consideration provided was of equal or greater value than the payment or payments received. (Regulation 18728(c); Regulation 18540(c).)

According to the facts in your letter, the mayor pro tem has been invited to speak at a conference in Hawaii. If the mayor pro tem's participation in the conference in Hawaii constitutes consideration of equal or greater value in exchange for all the various payments that Hawaii will be making to the mayor pro tem, the mayor pro tem may treat the payments as income.<sup>5/</sup>

Equal consideration means that each party receives benefits of equal value. (In re Burciaga (1975) 2 FPPC Ops. 17, copy enclosed.) While we have no exact formula to determine whether consideration of equal or greater value has been provided by the official, the following general guidelines may be of assistance. The value of services rendered may be proven by evidence as to the customary rate of compensation for such services, irrespective of official status. (Tassi v. Tassi (1958) 160 Cal. App. 2d 680,

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<sup>4/</sup> Regulation 18540 was adopted by the Commission on June 5, 1989. The regulation is currently under review with the Office of Administrative Law. However, we are advising pursuant to the regulation in the interim.

<sup>5/</sup> Absent evidence to the contrary, the Commission will presume that an honorarium is a gift. (Regulation 18540(c).)

690-691.) Also relevant in the determination might be the length of time spent rendering the services, or whether the services are of the type not readily available from others. Ultimately, however, the determination of whether equal consideration has been provided is necessarily a factual one.

If the payments can be classified as income, some of the payments to the mayor pro tem will fall within the exception to income in Section 82030(b)(2). For example, income in the form of a per diem allowance for expenses is expressly included within the exception, and therefore need not be reported. In addition, reimbursement for air and ground transportation has also generally been included within the exception. (Nejedly Advice Letter, No. 78-153, copy enclosed.) Any other payments that are classified as income, including the honorarium if consideration of equal or greater value is provided to the source in exchange for it, must be reported as income on Schedule D.

With respect to payments in connection with the conference that are gifts, these payments should be disclosed as honoraria on Schedule G. Schedule G requires all the information that is required for reporting a gift (i.e., the name and address of the donor, a description of the donor's business activity, and the amount and date received) and requires a specific description of the services provided. Honoraria and income will both be considered in determining whether the official must disqualify him or herself due to a financial interest in a decision.<sup>6/</sup>

#### The Gift and Honoraria Limit

Proposition 73 was adopted by the voters in the June 1988 primary election. This new law imposed a number of restrictions on elected officeholders with respect to campaigns, mass mailings and the acceptance of gifts.<sup>7/</sup> (Section 85100, et seq.) Section 85400 provides:

No elected officeholder shall accept any gift or honorarium for any speech, article, or published work on a subject relating to the governmental process from any single source which is in excess of one thousand dollars (\$1,000), in any calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith.

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<sup>6/</sup> Since the likelihood of the State of Hawaii coming before the Simi Valley City Council is relatively slight, we have not discussed the mayor pro tem's disqualification obligations. However, we have enclosed a pamphlet summarizing the Act's conflict of interest laws.

<sup>7/</sup> As stated above, all honoraria are gifts. If a payment is provided for full and adequate consideration, it is income, and not an honorarium or a gift.

According to this section, all elected officials are limited to \$1,000 per calendar year from any single source, where the gift or honorarium is for a speech, article, or published work on a subject relating to the governmental process. Regulation 18540(d) defines "governmental process" to include any activities related to the official duties of the elected officer, or the functions, programs and policies of government.

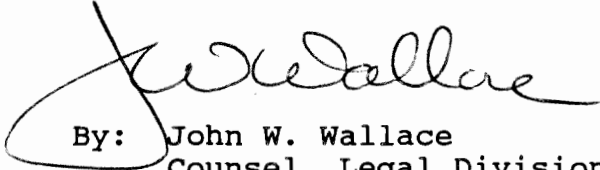
However, there are three important exceptions to this prohibition. First, by definition, where full consideration is provided in exchange for the payment, it is not considered an honorarium and the \$1,000 limit does not apply. (Section 82030; Regulation 18728.) Consequently, if the mayor pro tem's speech constitutes equal or greater consideration in exchange for the payment, the payment will not be considered with respect to the limit. Second, if a speech is given on a topic other than the governmental process, the payment is not considered with respect to the limits even though equal consideration may not have been provided. (Regulation 18540(f)(1).) However, the payment may still be a gift for other purposes under the Act. (Section 82028.) Finally, reimbursement for actual travel expenses and reasonable subsistence in connection with the event are also expressly excluded from the limit in the statute. (Section 85400.)

Consequently, since the subject of the mayor pro tem's speech will be related to the governmental process, the mayor pro tem may not receive more than \$1,000 from the State of Hawaii in honoraria in a calendar year. This amount would include any subsequent honoraria provided by the State of Hawaii and received by the mayor pro tem in the calendar year. This amount would exclude, however, payments for actual transportation, including airplane tickets, a rental car, and per diem. In addition, any payments for which consideration of equal or greater value has been provided will not be considered.

I trust that this answers your question. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

KED:JWW:plh

Enclosures

# CITY OF SIMI VALLEY

2929 TAPO CANYON ROAD, SIMI VALLEY, CALIFORNIA 93063  
(805) 583-6700

FPPC  
Nov 9 1 20 PM '89

November 7, 1989

Fair Political Practices Commission  
The Travelers Business Center  
428 J Street, Suite 800  
Sacramento, CA 95814

Attn: Ms. Katherine Donovan

RE: Request for Advice Letter

Dear Ms. Donovan:

This is to confirm my conversation and request for an advice letter as discussed by phone yesterday with your staff counsel, John Wallace.

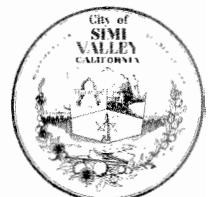
Question: A City Council Member has received an invitation from the State of Hawaii to speak at a conference on hazardous materials releases. The State of Hawaii has furnished a round trip airline ticket and will pay per diem for expenses. A rental car at state expense has been offered, as has an honorarium for the speaking engagement. The Council Member has preliminarily declined the offer of the car and honorarium. Must the Council Member report on her disclosure report the receipt of the foregoing, assuming that they will exceed a value of \$250.00?

We note that Government Code Section 82030 which defines income excludes therefrom "salary and reimbursement for expenses or per diem received from a state, local, or federal government agency." However, the airline ticket and furnished rental car, while provided by the state government, do not meet the statute's literal requirements. Whether an honorarium may be considered to be "salary" paid by a government agency is also questionable.

Since all of the foregoing involves payments made by or benefits paid for by a state agency, it would seem that the intent of the law is not frustrated by classifying all of them as exempt from disclosure. Please analyze each item separately as you deem appropriate.

The impact of the \$1,000.00 limit in Government Code Section 85400 is also of concern, although it is unlikely that the "single source" referred-to therein was intended to be applicable to a governmental entity.

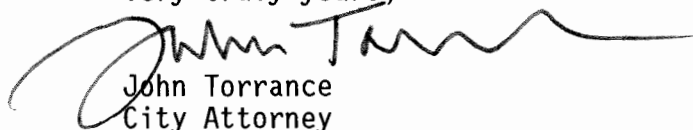
GREGORY STRATTON, Mayor  
ANN H. ROCK, Mayor Pro Tem  
VICKY HOWARD, Council Member  
GLEN W. McADOO, Council Member  
BILL DAVIS, Council Member



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Furthermore, the furnishing of transportation and the rental car in this case is not a gift or honorarium but is in the nature of reimbursement for actual expenses, which are exempt under the statute. This trip is to take place on December 6, 7, and 8, so a response by Friday, December 1, 1989, would be deeply appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Torrance", with a long, sweeping horizontal line extending to the right.

John Torrance  
City Attorney





# California Fair Political Practices Commission

November 20, 1989

John Torrance  
City Attorney  
2929 Tapo Canyon Road  
Simi Valley, CA 93063

Re: Letter No. 89-648

Dear Mr. Torrance:

Your letter requesting advice under the Political Reform Act was received on November 9, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh